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No. 86-715

IN THE
Supreme Court of the United States
October Term, 1986

IN RE FLIGHT TRANSPORTATION
CORPORATION SECURITIES LITIGATION
SUBCLASS IV (UNITHOLDERS),
Petitioner,

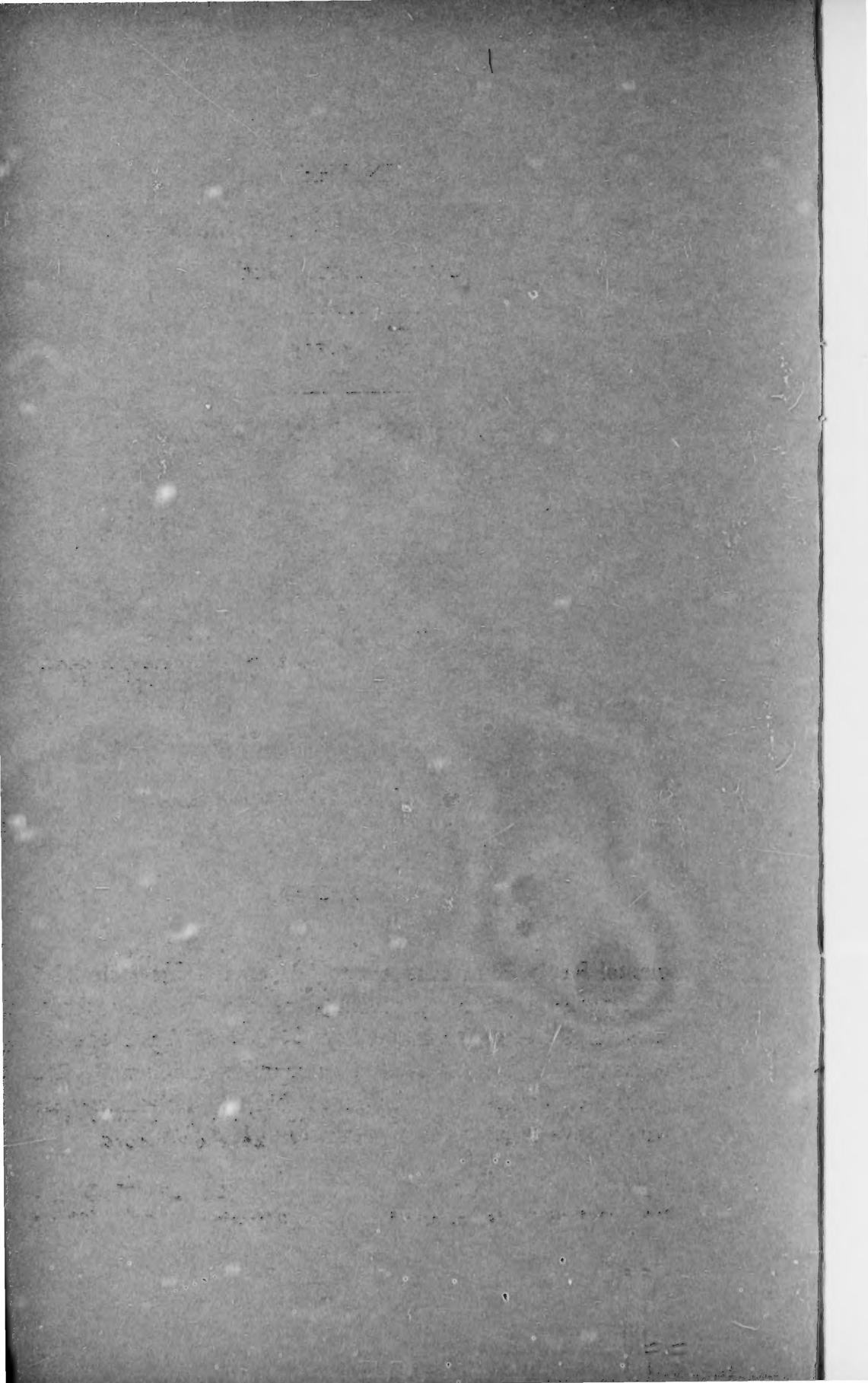
vs.

FOX & COMPANY,
REAVIS & McGRATH, ET AL.,
Respondents.

**PETITIONER'S SUPPLEMENTAL REPLY BRIEF
TO SUPPLEMENTAL BRIEF OF
HARRIS TRUST AND SAVINGS BANK**

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INTRODUCTION

Petitioner, Subclass IV ("Unitholders") files this Supplemental Reply Brief pursuant to Supreme Court Rule 22.6 in response to the Supplemental Brief filed by Harris Trust & Savings Bank ("Harris Bank"). Harris Bank's characterization of the intervening matters is incomplete and Petitioner wishes to inform the Court of certain matters which have occurred since Petitioner's last filing.

The Agreement to Dismiss the Petition is the Product of a Negotiated Agreement.

After filing the Petition for Writ of Certiorari with this Court, Petitioner negotiated a settlement which confers substantial benefits on Subclass IV. The Agreement¹, which is in the form of an Amendment to the Sharing Agreement, the initial settlement in this case, provides for a final allocation of more than \$2,800,000 to Subclass IV which will not be reduced by attorneys' fees for counsel for the other subclasses. It also provides for the expeditious distribution of the final settlement proceeds to each subclass member. In return for the benefits conferred on Subclass IV and in an effort to end Subclass IV's involvement in this case, Petitioner has agreed to request dismissal of this Petition as soon as the District Court's approval of the Agreement is no longer subject to appellate review ("Final Approval").

As with all settlements, counsel and the representatives of Subclass IV made a decision that the benefits to be derived from such a settlement outweigh the detriments. Petitioner did not act in a cavalier manner in agreeing "voluntarily" to dismiss its Petition, but rather has made a carefully reasoned determination that a dismissal was appropriate consideration for the immediate and substantial final distributions to the members of Subclass IV. That decision was approved by the District Court at a hearing after notice to all subclass members and the only objecting member was Harris Bank.

¹It is Petitioner's understanding that the Agreement along with the other documents referred to herein are being submitted to the Court with Respondents' Brief in Opposition to the Petition.

II.

Harris Bank's Procedural Maneuvers Endanger This Final Settlement.

The Agreement required Final Approval to occur no later than February 28, 1987. If not, the entire Agreement would be null and void. Although the Petitioner and the other parties to the Agreement have extended the deadline for Final Approval to April 30, 1987, the parties to the Agreement do not intend to extend the deadline further because the primary objective of the Agreement is to conclude these proceedings expeditiously for Subclass IV.

Harris Bank has placed the Agreement in jeopardy by its procedural maneuvering. It has appealed the District Court's approval of the settlement to the Eighth Circuit. At the same time, it has sought relief from this Court by way of its Supplemental Brief. Since filing the Supplemental Brief, Harris Bank moved to stay its appeal to the Eighth Circuit pending action by this Court. That motion was summarily denied and respondents have filed a motion to dismiss the appeal.

Harris Bank's actions have already delayed the final distribution to Subclass IV. In the judgment of Petitioner, it would be contrary to the best interests of Subclass IV if Harris Bank's actions resulted in the destruction of a favorable, negotiated settlement which would end Subclass IV's involvement in this protracted securities litigation.

CONCLUSION

In reviewing Harris Bank's Supplemental Brief, the Court should consider the substantial benefits conferred on Subclass IV by the Agreement and the importance of respecting a negotiated arrangement to expeditiously conclude Subclass IV's involvement in this case.

Respectfully submitted,

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March 27, 1987

